

**ENTERED**

October 20, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

RONALD BRUCE DUNCAN

§

VS.

§

SMITH & NEPHEW INC., ET AL.

§ CIVIL ACTION NO. 3:19-CV-00392

§

§

**ORDER ADOPTING MAGISTRATE JUDGE'S  
MEMORANDUM AND RECOMMENDATION**

On September 1, 2020, all non-dispositive pretrial matters in this case were referred to United States Magistrate Judge Andrew M. Edison pursuant to 28 U.S.C. § 636(b)(1)(A). Dkt. 20. On October 5, 2020, Judge Edison filed a memorandum and recommendation (Dkt. 22) recommending that Smith & Nephew, Inc.'s Rule 12(b)(6) Motion to Dismiss Plaintiff Ronald Bruce Duncan's First Amended Complaint (Dkt. 11) be granted in part and denied in part.

No objections have been filed to the memorandum and recommendation. Accordingly, the court reviews it for plain error on the face of the record. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

Based on the pleadings, the record, and the applicable law, the court finds that there is no plain error apparent from the face of the record. Accordingly:

- (1) Judge Edison's memorandum and recommendation (Dkt. 22) is approved and adopted in its entirety as the holding of the court; and
- (2) Smith & Nephew's motion to dismiss (Dkt. 11) is granted in part and denied in part. Specifically, the plaintiff's claims for strict liability—manufacturing defect, negligent misrepresentation, unjust

enrichment, DTPA violations, and punitive damages are dismissed.  
All other claims for affirmative relief remain.

Signed on Galveston Island this 20<sup>th</sup> day of October, 2020.

  
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JEFFREY VINCENT BROWN  
UNITED STATES DISTRICT JUDGE